

California Regional Water Quality Control Board
Santa Ana Region

September 6, 2002

ITEM: 17

SUBJECT: Executive Officer's Report

DISCUSSION:

1. **Water Quality Issues Briefing for State Senator Bob Margett** – On August 16th, Kurt Berchtold, Ken Williams and I participated in a briefing concerning water quality issues for State Senator Bob Margett (mostly Orange County). Also in attendance were Virginia Grebbian, General Manager of the Orange County Water District, and one of her staff; Brett Barbre, a director of the Municipal Water District of Orange County; Jim Gallagher and Pat Scanlan of the Southern California Water Company (SCWC) (Concerto Well issue); and representatives from the City of Anaheim and Yorba Linda Water District.

This briefing seemed to go very well. The Senator seemed interested in what everyone had to say about water issues, asked a number of good questions, carefully listened to everyone's answers, and made some good suggestions. Senator Margett indicated that he had a background in construction contracting, and he seemed to appreciate the issues that were raised. We spoke about many of the known threats to water quality in Orange County, including MtBE, volatile organics and perchlorate. The Senator asked both Jim Gallagher and me to speak about the Concerto Well matter, and Jim talked about the threats to his well, their concerns about the investigation completed to date, some of the issues between SCWC and Regional Board staff concerning the investigation, our recent meeting (see Item 6, below) during which many of the SCWC misunderstandings and issues were addressed, and the positive approach between his company and our agency to follow up on the matter.

The Senator asked about our understanding of the perception of the Regional Board by others, i.e., were we considered too tough or too easy. I responded by saying that many of those we regulate seem to think that we are too hard on them, but that there were also those who thought that we were not tough enough. Mr. Barbre of the Municipal Water District of Orange County offered the observation that many in Orange County felt the Regional Board was too focused on (storm water) runoff issues, instead of addressing historical groundwater contamination matters. I pointed out that this was probably true, because of the fund sources that support the organization. That is, there is a much higher level

of resources to address runoff issues than what is available for addressing groundwater contamination issues, such as by volatile organics.

We spoke about MtBE and leaking underground storage tanks (UST) for some time. The Senator asked whether there was a mechanism for funding cleanup of municipal water supply wells that had been affected by MtBE. We talked about how the UST cleanup fund was set up to address contamination resulting from leaks from USTs or from gasoline station piping systems, but was not yet available for addressing water supply wells that had become contaminated with MtBE. The Senator said that this was something that he was interested in pursuing.

We appreciated the opportunity to brief Senator Margett, and his staff will set up similar briefings in the future, probably on a semi-annual basis.

2. **Nitrogen/Total Dissolved Solids (N/TDS) Task Force and Maximum Benefit Basins** – N/TDS representatives have previously discussed with you the schedule and approach that we are proposing to take for bringing new water quality objectives for nitrogen and TDS to you for consideration in early in 2003. This process has taken significantly longer than even the most cynical among us thought possible. Now that we are nearing the end of the effort, there are a number of objections being raised from those who have chosen not to actively participate in the process of developing the objectives. Further, we have also talked about how some jurisdictions wish to petition the Board for objectives different from those that would be generated from the use of the State's anti-degradation policy (Resolution 68-16). To do so, the Board would be asked to find that the proposal would result in "...the highest water quality consistent with maximum benefit to the people of the State...". Proposals have been made for "maximum benefit" objectives in the Chino Basin, Yucaipa and Beaumont.

Staff supports the proposals for maximum benefit objectives for the basins mentioned above, but it seems that the necessary work to support the proposals may not be completed in time for their consideration next year. Further, when that work is completed, it is likely that there will be significant controversy generated by the proposals. We are no longer inclined to delay bringing the new water quality objectives for your consideration. The work completed to date shows that new objectives are clearly appropriate, and that some of the existing objectives are not supportable, given the data we now have. To meet our proposed schedule for bringing revised basin plan objectives for your consideration early next year, we must begin the peer review and public notice and review efforts very soon.

The maximum benefit proposals will require the development and implementation of a significant monitoring program to insure that the proposals, when implemented, meet the requirements of state policies. We are now in the

process of working with stakeholders on the monitoring proposal for the Chino Basin. The proposals for the other basins are not that far along. We are hoping that the stakeholders and proponents for the maximum benefit objectives will accelerate their efforts, but if they don't, we propose that the objectives, scientifically developed by the task force consultants and generated in compliance with State anti-degradation policies, be considered for adoption. If the Board chooses to adopt the proposed objectives for the watershed, then the entire effort would not be "held hostage" by waiting for resolution of issues related to the maximum benefit basins. Once the work on the maximum benefit basins is completed, we could then bring those matters to the Board for consideration.

3. **Appeals of Waste Discharge Requirements for the Rapid Infiltration and Extraction (RIX) Facility** – You may recall from the brief discussion during the Executive Officer's report at the close of the July 19, 2002 Board meeting that the Colton/San Bernardino Regional Tertiary Treatment and Water Reclamation Authority (Authority) had filed in San Bernardino County Superior Court an *ex parte* request for stay of certain effluent limitations in the RIX waste discharge requirements. Specifically, the Authority asked for a stay of the 2.2 total coliform effluent limit and the receiving water limitation for methylmercury. ("*Ex parte*" refers to the fact that the Authority tried to obtain Court consideration of this matter without Regional Board representation or input. By law, the Authority was required to provide 24 hours notice of its intent to proceed in this manner. When we received this notice, Jorge Leon and staff of the Attorney General's office dropped all other pending items in order to obtain a delay in the proceedings so that we could prepare appropriate responses to the Authority's arguments. Fortunately, these efforts were successful, enabling the Attorney General's office, Mr. Leon and Board staff to prepare a response brief.)

The Court heard this matter on August 6, 2002. The focus of the hearing was on the questions of whether the Authority had exhausted its administrative remedies (via review by the State Board), and whether, therefore, the matter was ripe for review by the Court. Prior to filing the stay request with the Court, the Authority had filed a Petition for Review of certain parts of the RIX waste discharge requirements (including the total coliform and methylmercury limits) with the State Board. However, recognizing that the State Board was already considering similar issues raised in petitions by other dischargers, the Authority requested that their Petition be held in abeyance, pending the State Board's disposition of the other petitions. The Authority had also filed a request for stay by the State Board. The State Board denied the stay request.

The Court rendered a decision denying the stay request on August 9th. Clearly, Board staff was pleased by this decision since we are firmly convinced that the limits at issue are necessary and appropriate to protect public health and the beneficial uses of the Santa Ana River.

At the same time as the Court proceedings, the Authority requested that the Petition for Review by the State Board be activated. Board staff is preparing a response to that Petition. Again, the 2.2 total coliform limit and the methylmercury receiving water limitation are at issue. In addition, the Authority argues that the TDS and individual mineral limitations are inappropriate, that the Board acted improperly in specifying mass as well as concentration-based limitations, and that the Board improperly dictated the method/manner of compliance with waste discharge requirements. It is noteworthy that at the October 26, 2001 Board hearing at which the Board adopted the RIX waste discharge requirements, the Authority representative indicated that there were only two issues over which there remained disagreement, namely, the 2.2 total coliform limit and the TDS/individual mineral limitations. It might also be emphasized that the adoption of the RIX waste discharge requirements followed almost three years of intensive discussion and negotiation between the Authority and Board staff to arrive at permit terms and conditions that were both reasonable and responsible. These efforts were acknowledged by the Authority representative at the October 26, 2001 hearing.

We will transmit a copy of our response to the Petition for Review to each of you when it is complete.

4. **Storm Water Annual Report Non-Submittals: Notice of Non-Compliance –** The State's General Permit for Storm Water Discharges Associated with Industrial Activities (General Permit) requires the permittees to submit an annual report by July 1 of each year. If an annual report is not submitted by that date, each regional board is required to send a notice of non-compliance followed by a second notice. If an annual report is not received within 60 days of the first notice of non-compliance, the regional board is required to impose a mandatory penalty of \$1,000.

As of July 15, 2002, 216 facilities had not submitted their annual reports, out of a total of 1,430 active permitted industrial facilities, and we issued notices of non-compliance to these facilities. Subsequently we received annual reports and/or other relevant information from 148 facilities. On August 15, 2002, the remaining 68 facilities were issued a second notice of non-compliance. If these facilities fail to submit their annual reports by September 16, 2002, complaints proposing mandatory minimum penalties and any appropriate additional civil penalties will be issued to these facilities.

5. **Ontario Well # 30 –** Ontario Well # 30 is a municipal water supply well owned and operated by the City of Ontario. The former Kaiser Steel facility (Kaiser) was located upstream from this well location. The groundwater beneath and downstream from the Kaiser facility has been impacted by waste discharge

practices at the Kaiser facility, resulting in a plume of groundwater containing high levels of total dissolved solids (TDS). Cleanup and Abatement Orders No. 87-121 and No. 91-40 were issued to Kaiser to mitigate the impact of this high TDS plume. In response to these Orders, in 1993, Kaiser entered into a settlement agreement with the Regional Board. Under the terms of this agreement, Kaiser is required to mitigate any adverse impacts caused by its plume on existing and otherwise useable municipal wells, including Ontario Well # 30.

On August 2, 2002, the City of Ontario met with Board staff and Kaiser to present data that suggest that Kaiser's plume has adversely impacted City of Ontario Well # 30. Kaiser has agreed to review these data and to respond to the City of Ontario's findings by October 1, 2002. After we review Kaiser's response, Board staff will recommend appropriate actions to implement the terms of the settlement agreement with Kaiser.

6. **Concerto Wellfield** - The Concerto wellfield is located within the cities of Anaheim/Yorba Linda in Orange County and consists of wells identified as Ballad (inactive), Concerto No. 1 (inactive) and Concerto No. 2. These wells are owned and operated by the Southern California Water Company (SCWC). These wells are impacted by or are threatened by volatile organic compounds (VOCs) and/or methyl tertiary butyl ether (MtBE). Three upstream service stations have been identified as potential responsible parties for the MtBE contamination. These responsible parties are cooperating with the investigation of the MtBE plume.

At the July 19, 2002 Board meeting, a short summary of the current status of investigation of MtBE sources around the Concerto wellfield was presented to the Board. The Board affirmed the current course of action and directed staff to work closely with the SCWC to address issues related to the MtBE threat to Concerto Well No. 2.

On August 1, 2002, Board staff met with staff from the SCWC. At the meeting, staff discussed the proposed future MtBE investigative activities and proposals for developing a contingency plan, should MtBE adversely impact Concerto Well No. 2. On August 6, 2002, Board staff also met with the technical consultants for SCWC, Mission Geoscience, Inc. (Mission). Mission expressed its concerns about data gaps and about the reliability of some of the data collected by GeoSyntec Consultants (consultants for the responsible parties). Board staff will be arranging a meeting with Mission and GeoSyntec Consultants to address these issues. Board staff has also agreed to arrange a meeting between the responsible parties and SCWC to begin negotiating a water supply contingency agreement between those groups.